

RULE 2. MEDIATION

Rule 2.1. Purpose

Mediation under this section involves the confidential process by which a neutral, acting as a mediator, selected by the parties or appointed by the court, assists the litigants in reaching a mutually acceptable agreement. The role of the mediator is to assist in identifying the issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise, and finding points of agreement as well as legitimate points of disagreement. Any agreement reached by the parties is to be based on the autonomous decisions of the parties and not the decisions of the mediator. It is anticipated that an agreement may not resolve all of the disputed issues, but the process can reduce points of contention. Parties and their representatives are required to mediate in good faith, but are not compelled to reach an agreement.

Rule 2.2. Case Selection/Objection

At any time fifteen (15) days or more after the period allowed for peremptory change of judge under Trial Rule 76(B) has expired, a court may on its own motion or upon motion of any party refer a civil or domestic relations case to mediation. After a motion referring a case to mediation is granted, a party may object by filing a written objection within seven (7) days in a domestic relations case or fifteen (15) days in a civil case. The party must specify the grounds for objection. The court shall promptly consider the objection and any response and determine whether the litigation should then be mediated or not. In this decision, the court shall consider the willingness of the parties to mutually resolve their dispute, the ability of the parties to participate in the mediation process, the need for discovery and the extent to which it has been conducted, and any other factors which affect the potential for fair resolution of the dispute through the mediation process. If a case is ordered for mediation, the case shall remain on the court docket and the trial calendar.

Rule 2.3. Listing of Mediators: Commission Registry of Mediators

Any person who wishes to serve as a registered mediator pursuant to these rules must register with the Indiana Supreme Court Commission for Continuing Legal Education (hereinafter

“Commission”) on forms supplied by the Commission. The registrants must meet qualifications as required in counties or court districts (as set out in Ind. Administrative Rule 3(A)) in which they desire to mediate and identify the types of litigation which they desire to mediate. Two or more persons individually who are qualified under A.D.R. Rule 2.5 may register as a mediation team. All professional licenses must be disclosed and identified in the form which the Commission requires.

The registration form shall be accompanied by a fee of \$50.00 for each registered area (Civil or Domestic). An annual fee of \$50.00 shall be due the second December 31st following initial registration. Registered mediators will be billed at the time their annual statements are sent. No fee shall be required of a full-time, sitting judge.

The Commission shall maintain a list of registered mediators including the following information: (1) whether the person qualified under A.D.R. Rule 2.5 to mediate domestic relations and/or civil cases; (2) the counties or court districts in which the person desires to mediate; (3) the type of litigation the person desires to mediate; and (4) whether the person is a full-time judge.

The Commission may remove a registered mediator from its registry for failure to meet or to maintain the requirements of A.D.R. Rule 2.5 for non-payment of fees. A registered mediator must maintain a current business and residential address and telephone number with the Commission. Failure to maintain current information required by these rules may result in removal from the registry.

For the billing of calendar year 2011, when this Rule becomes effective, registered mediators must pay the \$50.00 annual fee and a one-time fee of \$25.00 for the time period July 1, 2011-December 31, 2011, for a total of \$75.00 per registration area. The annual fee shall be \$50.00 per calendar year per registration area thereafter.

On or before October 31 of each year, each registered mediator will be sent an annual statement showing the mediator's educational activities that have been approved for mediator credit by the Commission.

Rule 2.4. Selection of Mediators

Upon an order referring a case to mediation, the parties may within seven (7) days in a domestic relations case or within fifteen (15) days in a civil case: (1) choose a mediator from the Commission's registry, or (2) agree upon a non-registered mediator, who must be approved by the trial court and who serves with leave of court. In the event a mediator is not selected by agreement, the court will designate three (3) registered mediators from the Commission's registry who are willing to mediate within the Court's district as set out in Admin. R. 3 (A). Alternately, each side shall strike the name of one mediator. The side initiating the lawsuit will strike first. The mediator remaining after the striking process will be deemed the selected mediator.

A person selected to serve as a mediator under this rule may choose not to serve for any reason. At any time, a party may request the court to replace the mediator for good cause shown. In the event a mediator chooses not to serve or the court decides to replace a mediator, the selection process will be repeated.

Rule 2.5. Qualifications of Mediators

(A) Civil Cases: Educational Qualifications.

- (1) Subject to approval by the court in which the case is pending, the parties may agree upon any person to serve as a mediator.
- (2) In civil cases, a registered mediator must be an attorney in good standing with the Supreme Court of Indiana.
- (3) To register as a civil mediator, a person must meet all the requirements of this rule and must have either: (1) taken at least forty (40) hours of Commission approved civil mediation training in the three (3) years immediately prior to submission of the registration application, or (2) completed forty (40) hours of Commission approved civil mediation training at any time and taken at least six (6) hours of approved Continuing Mediation Education in the three (3) years immediately prior to submission of the registration application.

- (4) However, a person who has met the requirements of A.D.R. Rule 2.5(B)(2)(a), is registered as a domestic relations mediator, and by December 31 of the second full year after meeting those requirements completes a Commission approved civil crossover mediation training program may register as a civil mediator.
- (5) As part of a judge's judicial service, a judicial officer may serve as a mediator in a case pending before another judicial officer.

(B) Domestic Relations Cases: Educational Qualifications.

- (1) Subject to approval of the court, in which the case is pending, the parties may agree upon any person to serve as a mediator.
- (2) In domestic relations cases, a registered mediator must be either: (a) an attorney, in good standing with the Supreme Court of Indiana; (b) a person who has a bachelor's degree or advanced degree from an institution recognized by a U.S. Department of Education approved accreditation organization, e.g. The Higher Learning Commission of the North Central Association of Colleges and Schools. Notwithstanding the provisions of (2)(a) and (b) above, any licensed professional whose professional license is currently suspended or revoked by the respective licensing agency, or has been relinquished voluntarily while a disciplinary action is pending, shall not be a registered mediator.
- (3) To register as a domestic relations mediator, a person must meet all the requirements of this rule and must have either: (1) taken at least forty (40) hours of Commission approved domestic relations mediation training in the three (3) years immediately prior to submission of the registration application, or (2) taken at least forty (40) hours of Commission approved domestic relations mediation training at any time, and taken at least six (6) hours of approved Continuing Mediation Education in the three (3) years immediately prior to submission of the registration application.
- (4) However, if a person is registered as a civil mediator and by December 31 of the second full year after meeting those requirements completes a Commission approved domestic

relations crossover mediation training program (s)he may register as a domestic relations mediator.

- (5) As part of a judicial service, a judicial officer may serve as a mediator in a case pending before another judicial officer.

(C) Continuing Mediation Education (“CME”) Requirements for All Registered

Mediators. A registered mediator must complete a minimum of six hours of Commission approved continuing mediation education anytime during a three-year educational period. A mediator's initial educational period commences January 1 of the first full year of registration and ends December 31 of the third full year. Educational periods shall be sequential, in that once a mediator's particular three-year period terminates, a new three-year period and six hour minimum shall commence. Mediators registered before the effective date of this rule shall begin their first three-year educational period January 1, 2004.

(D) Basic and Continuing Mediation Education Reporting Requirements. ~~Within~~

~~thirty (30) days of~~ Subsequent to presenting a Commission approved basic or continuing mediation education training course, the sponsor of that course must forward a list of attendees to the Commission. An attendance report received more than thirty (30) days after a program is concluded must include a late processing fee as approved by the Indiana Supreme Court. Received, in the context of an application, document(s), and/or other item(s) which is or are requested by or submitted to the Commission, means delivery to the Commission; mailed to the Commission by registered, certified or express mail return receipt requested or deposited with any third-party commercial carrier for delivery to the- Commission within three (3) calendar days, cost prepaid, properly addressed. Sending by registered or certified mail and by third-party commercial carrier shall be complete upon mailing or deposit. This list shall include for each attendee: full name; attorney number (if applicable); residence and business addresses and phone numbers; and the number of mediation hours attended. A course approved for CME may also qualify for CLE credit, so long as the course meets the requirements of Admission and Discipline

Rule 29. For courses approved for both continuing legal education and continuing mediation education, the sponsor must additionally report continuing legal education, speaking and professional responsibility hours attended.

(E) Accreditation Policies and Procedures for CME.

- (1) *Approval of courses.* Applications must be accompanied by an application fee as approved by the Indiana Supreme Court. An "application" means a completed application form, with all required attachments and fees, signed and dated by the Applicant. Applications received more than thirty (30) days after the conclusion of a course must include a late processing fee. The Commission shall approve the course, including law school classes, if it determines that the course will make a significant contribution to the professional competency of mediators who attend. In determining if a course, including law school classes, meets this standard the Commission shall consider whether:
 - (a) the course has substantial content dealing with alternative dispute resolution process;
 - (b) the course deals with matters related directly to the practice of alternative dispute resolution and the professional responsibilities of neutrals;
 - (c) the course deals with reinforcing and enhancing alternative dispute resolution and negotiation concepts and skills of neutrals;
 - (d) the course teaches ethical issues associated with the practice of alternative dispute resolution;
 - (e) the course deals with other professional matters related to alternative dispute resolution and the relationship and application of alternative dispute resolution principles;
 - (f) the course deals with the application of alternative dispute resolution skills to conflicts or issues that arise in settings other than litigation, such as workplace,

business, commercial transactions, securities, intergovernmental, administrative, public policy, family, guardianship and environmental, and,

- (g) in the case of law school classes, in addition to the standard set forth above the class must be a regularly conducted class at a law school accredited by the American Bar Association.

(2) Credit will be denied for the following activities:

- (a) Legislative, lobbying or other law-making activities.
- (b) In-house program. The Commission shall not approve programs which it determines are primarily designed for the exclusive benefit of mediators employed by a private organization or mediation firm. Mediators within related companies will be considered to be employed by the same organization or law firm for purposes of this rule. However, governmental entities may sponsor programs for the exclusive benefit of their mediator employees.
- (c) Programs delivered by these methods: satellite, microwave, video, computer, internet, telephone or other electronic methods. To be approved courses must provide a discussion leader or two-way communication, classroom setting away from the mediator's offices, opportunity to ask questions, and must monitor attendance.
- (d) Courses or activities completed by self-study.
- (e) Programs directed to elementary, high school or college student level neutrals.

(3) *Procedures for Sponsors.* Any sponsor may apply to the Commission for approval of a course. The application must:

- (a) be ~~submitted to~~received by the Commission at least thirty (30) days before the first date on which the course is to be offered;

~~(b) contain the information required by and be in the form approved by the Commission and available upon request or at the Commission's web site: www.in.gov/judiciary/ele; and~~

~~(e) be accompanied by the written course outline and brochure used to furnish information about the course to mediators. The application must:~~

(b) Include the nonrefundable application fee in order for the application to be reviewed by the Commission. Courses presented by non-profit sponsors which do not require a registration fee are eligible for an application fee waiver.

Courses presented by bar associations , Indiana Continuing Legal Education Forum (ICLEF) and government or academic entities will not be assessed an application fee, but are subject to late processing fees.

Applications received less than 30 days before a course is presented must also include a late processing fee in order to be processed by the Commission.

Either the provider or the attendee must pay all application and late fees before a mediator may receive credit.

Fees may be waived in the discretion of the Commission upon a showing of good cause.

(c) contain the information required by and be in the form set forth in the application approved by the Commission and available upon request;

(d) be accompanied by the written course outline and brochure used by the Sponsor to furnish information about the course to mediators; and

(e) be accompanied by an affidavit of the mediator attesting that the mediator attended the course together with a certification of the course Sponsor as to the mediator's attendance. If the application for course approval is made before attendance, this affidavit and certification requirement shall be fulfilled within thirty (30) days after course attendance. Attendance reports received more than thirty (30) after the conclusion of a course must include a late processing fee.

Course applications received more than one year after a course is presented may be denied as untimely.

(4) *Procedure for Mediators.* A mediator may apply for credit of a live course either before or after the date on which it is offered. The application must:

(a) be received by the Commission at least 30 days before the date on which the course is to be offered if they are seeking approval before the course is to be presented. If the applicant is seeking accreditation, the sponsor must apply within thirty (30) days of the conclusion of the course.

(b) Include the nonrefundable application fee in order for the application to be reviewed by the Commission. Courses presented by non-profit sponsors which do not require a registration fee are eligible for an application fee waiver.

Either the provider or the attendee must pay all application and late fees before a mediator may receive credit.

Fees may be waived in the discretion of the Commission upon a showing of good cause.

(c) contain the information required by and be in the form set forth in the application approved by the Commission and available upon request;

(d) be accompanied by the written course outline and brochure used by the Sponsor to furnish information about the course to mediators; and

(e) be accompanied by an affidavit of mediator attesting that the mediator attended the course together with a certification of the course Sponsor as to the mediator's attendance. If the application for course approval is made before attendance, this affidavit and certification must be received by the Commission within thirty (30) days after course attendance. An attendance report received more than thirty (30) days after the conclusion of a course must include a late processing fee.
Course applications received more than one year after a course is presented may be denied as untimely.

- ~~(a)—contain the information required by and be in the form approved by the Commission and available upon request or at the Commission's web site: www.in.gov/judiciary/ele;~~
- ~~(b)—be accompanied by the written course outline and brochure used to furnish information about the course to mediators; and,~~
- ~~(c)—be accompanied by an affidavit of the mediator attesting that the mediator attended the course together with a certification of the course Sponsor as to the mediator's attendance. If the application for course approval is made before attendance, this affidavit and certification requirement shall be fulfilled within thirty (30) days after course attendance.~~

(F) Procedure for Resolving Disputes. Any person who disagrees with a decision of the Commission and is unable to resolve the disagreement informally, may petition the Commission for a resolution of the dispute. Petitions ~~pursuant to this Section must be received by the Commission within thirty (30) days of notification by the Commission of the Commission's decision and~~ shall be considered by the Commission at its next regular meeting, provided that the petition is received by the Commission at least ten (10) business days before such meeting. ~~The~~ person filing the petition shall have the right to attend the Commission meeting at which the petition is considered and to present relevant evidence and arguments to the Commission. The rules of pleading and practice in civil cases shall not apply, and the proceedings shall be informal as directed by the Chair. The determination of the Commission shall be final subject to appeal directly to the Supreme Court.

(G) Confidentiality. Filings with the Commission shall be confidential. These filings shall not be disclosed except in furtherance of the duties of the Commission or upon the request, by the mediator involved, or as directed by the Supreme Court.

(H) Rules for Determining Education Completed.

- (1) *Formula.* The number of hours of continuing mediation education completed in any course by a mediator shall be computed by:
- (a) Determining the total instruction time expressed in minutes;
 - (b) Dividing the total instruction time by sixty (60); and
 - (c) Rounding the quotient up to the nearest one-tenth (1/10).

Stated in an equation the formula is:

$$\frac{\begin{array}{l} \text{Total Instruction time} \\ \text{(in minutes)} \end{array}}{\text{Sixty (60)}} = \begin{array}{l} \text{Hours completed (rounded up the} \\ \text{nearest 1/10)} \end{array}$$

- (2) *Instruction Time Defined.* Instruction time is the amount of time when a course is in session and presentations or other educational activities are in progress. Instruction time does not include time spent on:
- (a) Introductory remarks;
 - (b) Breaks; or
 - (c) Business meetings
- (3) A registered mediator who participates as a teacher, lecturer, panelist or author in an approved continuing mediation education course will receive credit for:
- (a) Four (4) hours of approved continuing mediation education for every hour spent in presentation.
 - (b) One (1) hour of approved continuing mediation education for every four (4) hours of preparation time for a contributing author who does not make a presentation relating to the materials prepared.

- (c) One (1) hour of approved continuing mediation education for every hour the mediator spends in attendance at sessions of a course other than those in which the mediator participates as a teacher, lecturer or panel member.
- (d) Mediators will not receive credit for acting as a speaker, lecturer or panelist on a program directed to elementary, high school or college student level neutrals, or for a program that is not approved under Alternative Dispute Resolution Rule 2.5(E).